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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 NATHANIEL WHALEY,

13 Plaintiff,

14 v.

15 NATIONAL ASSOCIATION OF
16 REALTORS®; LAS VEGAS REALTORS®;
17 NEVADA REALTORS; SIERRA NEVADA
18 REALTORS; INCLINE VILLAGE
19 REALTORS®; ELKO COUNTY REALTORS;
20 MESQUITE REAL ESTATE ASSOCIATION;
21 GREATER LAS VEGAS MLS; NORTHERN
22 NEVADA REGIONAL MLS; JASON
23 MITCHELL GROUP; OPENDOOR
24 BROKERAGE LLC; eXp REALTY;
25 BERKSHIRE HATHAWAY
26 HOMESERVICES NEVADA PROPERTIES;
SIMPLY VEGAS; URBAN NEST REALTY;
LUXURY HOMES OF LAS VEGAS;
HUNTINGTON AND ELLIS, KELLER
WILLIAMS SOUTHERN NEVADA; KELLER
WILLIAMS VIP; KELLER WILLIAMS
REALTY LAS VEGAS; KELLER WILLIAMS
REALTY THE MARKETPLACE; ENGELS &

Case No.: 2:24-cv-00105-ART-EJY

ORDER GRANTING

**JOINT STIPULATED MOTION¹
TO STAY ENTIRE CASE FOR 60
DAYS AND TO FURTHER STAY
PROCEEDINGS AS TO CERTAIN
DEFENDANTS THROUGH FINAL
APPROVAL OF NATIONWIDE
SETTLEMENTS**

27 ¹ This paper is styled as a stipulated motion pursuant to LR 7-2 rather than a stipulation for
28 the sole reason that certain Defendants are not signatories to this motion. The undersigned
are unaware of any objection to the relief requested in this Joint Motion from any non-
signatory Defendant.

VOLKERS LAKE TAHOE; DOUGLAS
ELLIMAN OF NEVADA; REDFIN
HOMESERVICES LLC; REDFIN
CORPORATION; DOES I through X; and ROE
CORPORATIONS I through X, inclusive;

Defendants.

AND CONSOLIDATED CASE

Case No. 2:24-cv-00340-ART-MDC

ANGELA BOYKIN, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

NATIONAL ASSOCIATION OF
REALTORS®; UMRO REALTY CORP. d/b/a
The Agency; CHASE INTERNATIONAL,
INC.; DICKSON REALTY, INC.; COMPASS,
INC.; eXp WORLD HOLDINGS, INC.; THE
REAL ESTATE GUY INC.; BHH
AFFILIATES, LLC; DOUGLAS ELLIMAN
INC.; DOUGLAS ELLIMAN REALTY, LLC;
HOMESMART INTERNATIONAL LLC;
CRAIG TANN, LTD d/b/a HUNTINGTON &
ELLIS A REAL ESTATE AGENCY; REALTY
ONE GROUP; REALTY ONE GROUP
EMINENCE; REDFIN CORPORATION;
URBAN NEST REALTY, LLC; NEVADA
REALTORS; GREATER LAS VEGAS
ASSOCIATION OF REALTORS; GREATER
LAS VEGAS ASSOCIATION OF REALTORS
MULTIPLE LISTING SERVICE, INC.; ELKO
COUNTY REALTORS; INCLINE VILLAGE
REALTORS, INC.; SIERRA NEVADA
REALTORS; NORTHERN NEVADA
REGIONAL MULTIPLE LISTING SERVICE,
INC.; MESQUITE REAL ESTATE
ASSOCIATION, INC., A NEVADA NON-
PROFIT CORPORATION;

Defendants.

1 Plaintiff Nathaniel Whaley and Plaintiff Angela Boykin, on behalf of themselves
 2 and all others similarly situated (individually, the “Whaley Plaintiffs” and the “Boykin
 3 Plaintiffs” collectively, “Plaintiffs”), and the undersigned Defendants, (together with
 4 Plaintiffs, the “Stipulating Parties”),² jointly move to: (1) stay the proceedings in this case
 5 for 60 days from the date of this Court’s Order; and (2) further stay proceedings as to the
 6 REALTOR® Defendants³; Compass, Inc.; Douglas Elliman Inc., Douglas Elliman Realty,
 7 LLC, and Douglas Elliman of Nevada (collectively “Douglas Elliman”); BHH Affiliates,
 8 LLC; Berkshire Hathaway HomeServices Nevada Properties; Realty ONE Group; and
 9 Realty ONE Group Eminence, through a determination on final approval of their respective
 10 settlement agreements (collectively, the settlements are referred to herein as, “the
 11 Nationwide Settlements”). In support of this joint stipulated motion, the Stipulating Parties
 12 provide as follows:

13 1. The Whaley Plaintiffs filed a Class Action Complaint (ECF No. 1) on
 14 January 15, 2024.

15 2. The Whaley Plaintiffs filed a First Amended Class Action Complaint (the
 16 “Amended Complaint”) (ECF No. 6) on January 25, 2024.

17 3. The Boykin Plaintiffs filed a Class Action Complaint in the consolidated
 18 action on February 16, 2024.

19 4. On March 8, 2024, in the *Whaley* action Defendant National Association of
 20 REALTORS® filed a Joint Stipulated Motion (“*Whaley* Motion”) to Stay Proceedings
 21 Pending Determination of the Motion to Transfer (“MDL Motion”) by the Judicial Panel on
 22 Multidistrict Litigation (the “JPML”) (ECF No. 28).

23
 24 ² Defendants Compass, Inc., Greater Las Vegas Association of REALTORS®, Greater Las
 25 Vegas Association of REALTORS® Multiple Listing Service, consent to the stay requested
 herein but have not yet retained local counsel and thus cannot sign this motion.

26 ³ The “REALTOR® Defendants” are referred to herein as Defendants: National Association
 27 of REALTORS®; Greater Las Vegas Association of REALTORS®; Nevada REALTORS®;
 28 Elko County REALTORS®; Incline Village REALTORS®; Mesquite Real Estate
 Association, Inc.; Greater Las Vegas Association of REALTORS®; and Sierra Nevada
 REALTORS®.

1 5. This Court granted the *Whaley* Motion on March 11, 2024, “stay[ing] the
2 entire case until the later of (i) 30 days after the [JPML] rules on the pending MDL Motion,
3 or (ii) 30 days after the date of service or waiver of service of the Amended Complaint on
4 such Defendant” (ECF No. 31).

5 6. Pursuant to the Court’s Order (ECF No. 56) issued in *Boykin* on March 21,
6 2024, the *Boykin* action was administratively closed and consolidated with the *Whaley*
7 action.

8 7. On March 15, 2024, the plaintiffs in *Burnett v. The National Association of*
9 *Realtors*, No. 4:19-cv-00332 (W.D. Mo.) (“*Burnett*”), *Moehrl v. The National Association*
10 *of Realtors*, No. 1:19-cv-01610 (N.D. Ill.) (“*Moehrl*”), *Gibson v. National Association of*
11 *Realtors* (“*Gibson*”), No. 4:23-cv-00788 (W.D. Mo.), and *Umpa v. National Association of*
12 *Realtors* (“*Umpa*”), No. 4:23-cv-00945 (W.D. Mo.) entered into a settlement agreement
13 (“NAR Settlement Agreement”), attached hereto as Exhibit A, with Defendant National
14 Association of REALTORS® (“NAR”), which, if approved, would constitute a nationwide
15 settlement against the “Released Parties,” as defined in the NAR Settlement Agreement (Ex.
16 A ¶¶ 17-18).

17 8. On March 21, 2024, Defendant Compass, Inc., entered into a settlement
18 agreement with the plaintiffs in *Gibson* and *Umpa*, which would constitute a nationwide
19 settlement that may include similar claims at issue in this case. (*Gibson*, ECF No. 135).

20 9. On March 22, 2024, Defendant HomeSmart International LLC filed a Joint
21 Consent Motion to Stay Proceedings Pending Determination of Motion to Transfer (the
22 “MDL Motion”) by the Judicial Panel on Multidistrict Litigation (the JPML) as to the
23 *Boykin* Defendants (the “*Boykin* Motion”) (ECF No. 36).

24 10. On April 2, 2024, this Court granted the *Boykin* Motion, and further
25 instructed that if the MDL Motion was denied, “the parties shall promptly negotiate and
26 within 30 (thirty) days file a proposed schedule for this matter, including a schedule for
27 amended pleadings and a deadline for the defendants to file a responsive pleading or
28 otherwise respond to the operative Complaint.” (ECF No. 60).

1 11. On April 12, 2024, the JPML denied the MDL Motion (*see* ECF No. 62).

2 12. On April 19, 2024, the Motion for Preliminary Approval of the NAR
3 Settlement Agreement (“Preliminary Approval Motion”) as to NAR was filed in *Burnett*
4 (*see Burnett*, ECF No. 1458).

5 13. On April 22, 2024, the *Burnett* court granted the Preliminary Approval
6 Motion (*Burnett*, ECF No. 1460).

7 14. On April 23, 2024, Defendant Realty ONE Group entered into a settlement
8 agreement with the plaintiffs in *Gibson* and *Umpa*, which, if approved, would constitute a
9 nationwide settlement that may include similar claims at issue in this case.

10 15. On April 25, 2024, Defendants HomeServices of America, BHH Affiliates
11 LLC, and HSF Affiliates LLC (collectively “the HomeServices Defendants”) executed a
12 binding term sheet to settle all claims asserted against the HomeServices Defendants. Under
13 the terms of this settlement, a Released Party includes the HomeServices Defendants, its
14 officers, directors, employees, as well as direct or indirect subsidiaries among others. If
15 approved, this would constitute a nationwide settlement that may include similar claims to
16 those at issue in this case.

17 16. On April 29, 2024, the Motion for Preliminary Approval of the Realty ONE
18 Group Settlement Agreement was filed in *Gibson* and *Umpa*, which the Court granted on
19 April 30, 2024 (*see Gibson*, ECF No. 163).

20 17. On April 29, 2024, Defendant Douglas Elliman filed a Notice of Pending
21 Settlement in *Gibson* and *Umpa* advising the Court that Douglas Elliman had entered into a
22 settlement agreement with the plaintiffs in those actions, which would constitute a
23 nationwide settlement that may include similar claims at issue in this case. (*Gibson*, ECF
24 No. 157).

25 18. On April 30, 2024, the *Gibson*⁴ court granted the Motion for Preliminary
26 Approval related to Compass’ and Douglas Elliman’s respective settlements with the
27

28 ⁴ On April 23, 2024, the Court in *Gibson* and *Umpa*, issued an order consolidating the *Umpa*
action into the *Gibson* action. (*Gibson*, ECF No. 145).

1 *Gibson* and *Umpa* plaintiffs. (*Gibson*, ECF No. 163). The court’s order enjoins all members
2 of the nationwide settlement class from pursuing any claims against Compass, Douglas
3 Elliman, and the “Released Parties” defined in each of their respective settlements based on
4 the same factual predicates as the claims alleged in *Gibson*.

5 19. The NAR Settlement Agreement defines certain categories of entities,
6 including, for example, NAR, REALTOR-Associate® Members, REALTOR® Member
7 Boards, REALTOR® Multiple Listing Services, Non-REALTOR® Multiple Listing
8 Services, and brokerages, and identifies what steps, if any, each category must take to
9 qualify as a “Released Party” pursuant to the NAR Settlement Agreement. (Ex. A ¶ 18).

10 20. Certain entities must expressly enter into an “opt in” agreement, and comply
11 with certain other terms, to qualify as “Released Parties.” (Ex. A ¶ 18).

12 21. The REALTOR® Defendants do not have to enter into an “opt in” agreement
13 in order to be considered “Released Parties.” (Ex. A. ¶ 18(b)).

14 22. Certain other defendants in the above-captioned litigation must enter into an
15 “opt in” agreement, within 60 days from the date the first Motion for Preliminary Approval
16 is filed, and comply with certain other terms, in order to be considered “Released Parties.”
17 (Ex. A ¶ 18(c-f)); *see also id.* ¶¶ 20, 66, 67).

18 23. Plaintiffs and NAR, speaking on behalf of the Defendants, met and conferred
19 regarding the status of this case in light of the Nationwide Settlements and this Court’s
20 directive to “negotiate and within 30 (thirty) days file a proposed schedule for this matter,
21 including a schedule for amended pleadings and a deadline for the defendants to file a
22 responsive pleading or otherwise respond to the operative Complaint,” because the pending
23 MDL Motion was denied.” (ECF No. 60).

24 24. Plaintiffs and the Defendants have agreed that it is in the interest of judicial
25 efficiency for this Court to modify the current deadlines set forth in its April 2, 2024, Order
26 (ECF No. 60), and enter an Order to:

- 27 (1) Stay the case as to the REALTOR® Defendants through a decision on final
28 approval of the NAR Settlement Agreement;

- (2) Stay the case as to Defendant Compass, Inc. through a decision on final approval of its settlement agreement;
- (3) Stay the case as to Defendants Douglas Elliman Inc., Douglas Elliman Realty, LLC, and Douglas Elliman of Nevada through a decision on final approval of their settlement agreement;
- (4) Stay the case as to Defendants Berkshire Hathaway HomeServices Nevada Properties, and BHH Affiliates, LLC, through a decision on final approval of the HomeServices Defendants' settlement agreement;
- (5) Stay the case as to Defendants Realty ONE Group and Realty ONE Group Eminence through a decision on final approval of the Realty ONE Group settlement agreement;
- (6) Stay the case from the date of the Court's order as to the remaining parties for 60 days to allow other Defendants to determine whether they will "opt in" and otherwise comply with the NAR Settlement Agreement, and therefore also become "Released Parties," or to file their own motions to stay based on their own settlement agreements. This stay does not prohibit settlement discussions, negotiations, or mediations between Plaintiffs and remaining Defendants, and/or the exchange of informal discovery to facilitate settlement; and
- (7) Order that no later than 14 days after the expiration of the 60-day stay, Plaintiffs and the remaining Defendants (assuming such Defendants have been properly served), including any additional "Released Parties," will file a status report, including whether the above-captioned litigation should be stayed as to any new Released Parties through final approval of the NAR Settlement Agreement and/or propose a litigation and briefing schedule for any responses to the Complaints and/or amended complaints for any remaining Defendants in the above-captioned litigation who have not become Released Parties.

25. Courts in other similar actions have already granted stays in light of the Nationwide Settlements, including in the following cases:

- *Freedlund v. Redfin Corporation*, No. 2:24-cv-01561 (C.D. Cal. Apr. 16, 2024), Order granting stay as to defendants NAR and California Association of REALTORS® through a decision on final approval, ECF No. 28;
- *Burton v. National Association of REALTORS*, No. 7:23-cv-05666 (D.S.C. Apr. 23, 2024), Order granting stay as to NAR through a decision on final approval, ECF No. 39; and
- *Fierro v. National Association of Realtors*, No. 2:24-cv-00449 (C.D. Cal. Apr. 30, 2024), Order granting stay of entire case for 60 days, and further staying case as to certain defendants through final approval of respective nationwide settlement agreements, as requested in this Stipulated Motion, ECF No. 148.
- *QJ Team, LLC v. Texas Assoc. of Realtors, Inc.*, No. 4:23-cv-01013 (E.D. Tex. May 1, 2024), Order granting stay as to NAR-Affiliated Defendants pending final approval of the NAR Settlement, ECF No. 205.

26. The Defendants do not waive any rights to arbitration or other forms of alternative dispute resolution, and expressly reserve and assert, and do not waive, their binding arbitration rights. Defendants reserve the right to file formal motions asserting these rights at each phase of litigation.⁵

27. Defendants do not waive any rights to enforce provisions of any applicable agreements including class waiver provisions and/or limitations periods, and expressly reserve and assert, and do not waive, their binding and enforceable rights. Defendants reserve the right to file formal motions asserting these rights at each phase of litigation.

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⁵ Defendants also do not waive and expressly reserve any rights as to any personal jurisdiction arguments.

28. Plaintiffs and the proposed class expressly reserve all rights available to them in this or any other proceeding.

IT IS SO ORDERED:



ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE

DATED: May 13, 2024

Dated this 10th day of May, 2024.

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on the 10th day of May, 2024, I caused the foregoing **JOINT STIPULATED MOTION AND [PROPOSED] ORDER TO STAY ENTIRE CASE FOR 60 DAYS AND TO FURTHER STAY PROCEEDINGS AS TO CERTAIN DEFENDANTS THROUGH FINAL APPROVAL OF NATIONWIDE SETTLEMENTS** to be served by electronic mail to the following:

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7 /s/ Dawn M. Hayes

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